

108TH CONGRESS
1ST SESSION

H. R. 1561

To amend title 35, United States Code, with respect to patent fees, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2003

Mr. SMITH of Texas (for himself and Mr. BERMAN) (both by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, with respect to
patent fees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Patent
5 and Trademark Fee Modernization Act of 2003”.

6 **SEC. 2. FEES FOR PATENT SERVICES.**

7 (a) GENERAL PATENT FEES.—Section 41(a) of title
8 35, United States Code, is amended to read as follows:

9 “(a) GENERAL FEES.—The Director shall charge the
10 following fees:

1 “(1) FILING AND BASIC NATIONAL FEES.—

2 “(A) On filing each application for an
3 original patent, except for design, plant, or pro-
4 visional applications, \$300.

5 “(B) On filing each application for an
6 original design patent, \$200.

7 “(C) On filing each application for an
8 original plant patent, \$200.

9 “(D) On filing each provisional application
10 for an original patent, \$200.

11 “(E) On filing each application for the re-
12 issue of a patent, \$300.

13 “(F) The basic national fee for each inter-
14 national application filed under the treaty de-
15 fined in section 351(a) of this title entering the
16 national state under section 371 of this title,
17 \$300.

18 “(G) In addition, excluding any sequence
19 listing or computer program listing filed in an
20 electronic medium as prescribed by the Direc-
21 tor, for any application the specification and
22 drawings of which exceed 100 sheets of paper
23 (or equivalent as prescribed by the Director if
24 filed in an electronic medium), \$250 for each
25 additional 50 sheets of paper (or equivalent as

1 prescribed by the Director if filed in an elec-
2 tronic medium) or fraction thereof.

3 “(2) EXCESS CLAIMS FEES.—In addition to the
4 fee specified in paragraph (1)—

5 “(A) on filing or on presentation at any
6 other time, \$200 for each claim in independent
7 form in excess of 3;

8 “(B) on filing or on presentation at any
9 other time, \$50 for each claim (whether de-
10 pendent or independent) in excess of 20; and

11 “(C) for each application containing a mul-
12 tiple dependent claim, \$360.

13 For the purpose of computing fees under this para-
14 graph, a multiple dependent claim referred to in sec-
15 tion 112 of this title or any claim depending there-
16 from shall be considered as separate dependent
17 claims in accordance with the number of claims to
18 which reference is made. The Director may by regu-
19 lation provide for a refund of any part of the fee
20 specified in this paragraph for any claim that is can-
21 celed before an examination on the merits, as pre-
22 scribed by the Director, has been made of the appli-
23 cation under section 131 of this title. Errors in pay-
24 ment of the additional fees under this paragraph

1 may be rectified in accordance with regulations pre-
2 scribed by the Director.

3 “(3) EXAMINATION FEES.—

4 “(A) For examination of each application
5 for an original patent, except for design, plant,
6 provisional, or international applications, \$200.

7 “(B) For examination of each application
8 for an original design patent, \$130.

9 “(C) For examination of each application
10 for an original plant patent, \$160.

11 “(D) For examination of the national stage
12 of each international application, \$200.

13 “(E) For examination of each application
14 for the reissue of a patent, \$600.

15 The provisions of section 111(a)(3) of this title re-
16 lating to the payment of the fee for filing the appli-
17 cation shall apply to the payment of the fee specified
18 in this paragraph with respect to an application filed
19 under section 111(a) of this title. The provisions of
20 section 371(d) of this title relating to the payment
21 of the national fee shall apply to the payment of the
22 fee specified in this paragraph with respect to an
23 international application. The Director may by regu-
24 lation provide for a refund of any part of the fee
25 specified in this paragraph for any applicant who

1 files a written declaration of express abandonment
2 as prescribed by the Director before an examination
3 has been made of the application under section 131
4 of this title, and for any applicant who provides a
5 search report that meets the conditions prescribed
6 by the Director.

7 “(4) ISSUE FEES.—

8 “(A) For issuing each original patent, ex-
9 cept for design or plant patents, \$1,400.

10 “(B) For issuing each original design pat-
11 ent, \$800.

12 “(C) For issuing each original plant pat-
13 ent, \$1,100.

14 “(D) For issuing each reissue patent,
15 \$1,400.

16 “(5) DISCLAIMER FEE.—On filing each dis-
17 claimer, \$130.

18 “(6) APPEAL FEES.—

19 “(A) On filing an appeal from the exam-
20 iner to the Board of Patent Appeals and Inter-
21 ferences, \$500.

22 “(B) In addition, on filing a brief in sup-
23 port of the appeal, \$500, and on requesting an
24 oral hearing in the appeal before the Board of
25 Patent Appeals and Interferences, \$1,000.

1 “(7) REVIVAL FEES.—On filing each petition
2 for the revival of an unintentionally abandoned ap-
3 plication for a patent, for the unintentionally delayed
4 payment of the fee for issuing each patent, or for an
5 unintentionally delayed response by the patent owner
6 in any reexamination proceeding, \$1,500, unless the
7 petition is filed under section 133 or 151 of this
8 title, in which case the fee shall be \$500.

9 “(8) EXTENSION FEES.—For petitions for 1-
10 month extensions of time to take actions required by
11 the Director in an application—

12 “(A) on filing a first petition, \$120;

13 “(B) on filing a second petition, \$330; and

14 “(C) on filing a third or subsequent peti-
15 tion, \$570.”.

16 (b) PATENT MAINTENANCE FEES.—Section 41(b) of
17 title 35, United States Code, is amended to read as fol-
18 lows:

19 “(b) MAINTENANCE FEES.—The Director shall
20 charge the following fees for maintaining in force all pat-
21 ents based on applications filed on or after December 12,
22 1980:

23 “(1) 3 years and 6 months after grant, \$900.

24 “(2) 7 years and 6 months after grant, \$2,300.

1 “(3) 11 years and 6 months after grant,
2 \$3,800.

3 Unless payment of the applicable maintenance fee is
4 received in the United States Patent and Trademark
5 Office on or before the date the fee is due or within
6 a grace period of 6 months thereafter, the patent
7 will expire as of the end of such grace period. The
8 Director may require the payment of a surcharge as
9 a condition of accepting within such 6-month grace
10 period the payment of an applicable maintenance
11 fee. No fee may be established for maintaining a de-
12 sign or plant patent in force.”.

13 (c) PATENT SEARCH FEES.—Section 41(d) of title
14 35, United States Code, is amended to read as follows:

15 “(d) PATENT SEARCH AND OTHER FEES.—

16 “(1) PATENT SEARCH FEES.—(A) The Director
17 shall charge a fee for the search of each application
18 for a patent, except for provisional applications. The
19 Director shall establish the fees charged under this
20 paragraph to recover an amount not to exceed the
21 estimated average cost to the Office of searching ap-
22 plications for patent either by acquiring a search re-
23 port from a qualified search authority, or by causing
24 a search by Office personnel to be made, of each ap-
25 plication for patent.

1 “(B) For purposes of determining the fees to be
2 established under this paragraph, the cost to the Of-
3 fice of causing a search of an application to be made
4 by Office personnel shall be deemed to be—

5 “(i) \$500 for each application for an origi-
6 nal patent, except for design, plant, provisional,
7 or international applications;

8 “(ii) \$100 for each application for an origi-
9 nal design patent;

10 “(iii) \$300 for each application for an
11 original plant patent;

12 “(iv) \$500 for the national stage of each
13 international application; and

14 “(v) \$500 for each application for the re-
15 issue of a patent.

16 “(C) The provisions of section 111(a)(3) of this
17 title relating to the payment of the fee for filing the
18 application shall apply to the payment of the fee
19 specified in this paragraph with respect to an appli-
20 cation filed under section 111(a) of this title. The
21 provisions of section 371(d) of this title relating to
22 the payment of the national fee shall apply to the
23 payment of the fee specified in this paragraph with
24 respect to an international application.

1 “(D) The Director may by regulation provide
2 for a refund of any part of the fee specified in this
3 paragraph for any applicant who files a written dec-
4 laration of express abandonment as prescribed by
5 the Director before an examination has been made
6 of the application under section 131 of this title, and
7 for any applicant who provides a search report that
8 meets the conditions prescribed by the Director.

9 “(2) OTHER FEES.—The Director shall estab-
10 lish fees for all other processing, services, or mate-
11 rials relating to patents not specified in this section
12 to recover the estimated average cost to the Office
13 of such processing, services, or materials, except that
14 the Director shall charge the following fees for the
15 following services:

16 “(A) For recording a document affecting
17 title, \$40 per property.

18 “(B) For each photocopy, \$.25 per page.

19 “(C) For each black and white copy of a
20 patent, \$3.

21 The yearly fee for providing a library specified in
22 section 12 of this title with uncertified printed copies
23 of the specifications and drawings for all patents in
24 that year shall be \$50.”.

1 (d) ADJUSTMENTS.—Section 41(f) of title 35, United
2 States Code, shall apply to the fees established under the
3 amendments made by this section, beginning in fiscal year
4 2005.

5 (e) CONFORMING AMENDMENTS.—

6 (1) Section 41 of title 35, United States Code,
7 is amended—

8 (A) in subsection (c), by striking “(c)(1)”
9 and inserting “(c) LATE PAYMENT OF FEES.—
10 (1)”;

11 (B) in subsection (e), by striking “(e)” and
12 inserting “(e) WAIVERS OF CERTAIN FEES.—”;

13 (C) in subsection (f), by striking “(f)” and
14 inserting “(f) ADJUSTMENTS IN FEES.—”;

15 (D) in subsection (g), by striking “(g)”
16 and inserting “(g) EFFECTIVE DATES OF
17 FEES.—”;

18 (E) in subsection (h), by striking “(h)(1)”
19 and inserting “(h) REDUCTIONS IN FEES FOR
20 CERTAIN ENTITIES.—(1)”;

21 (F) in subsection (i), by striking “(i)(1)”
22 and inserting “(i) SEARCH SYSTEMS.—(1)”.

23 (2) Section 119(e)(2) of title 35, United States
24 Code, is amended by striking “subparagraph (A) or
25 (C) of”.

1 **SEC. 3. ADJUSTMENT OF TRADEMARK FEES.**

2 (a) FEE FOR FILING APPLICATION.—The fee under
3 section 31(a) of the Trademark Act of 1946 (15 U.S.C.
4 1113(a)) for filing an electronic application for the reg-
5 istration of a trademark shall be \$325. If the trademark
6 application is filed on paper, the fee shall be \$375. The
7 Director may reduce the fee for filing an electronic appli-
8 cation for the registration of a trademark to \$275 for any
9 applicant who prosecutes the application through elec-
10 tronic means under such conditions as may be prescribed
11 by the Director. Beginning in fiscal year 2005, the provi-
12 sions of the second and third sentences of section 31(a)
13 of the Trademark Act of 1946 shall apply to the fees es-
14 tablished under this section.

15 (b) REFERENCE TO TRADEMARK ACT OF 1946.—For
16 purposes of this section, the “Trademark Act of 1946”
17 refers to the Act entitled “An Act to provide for the reg-
18 istration and protection of trademarks used in commerce,
19 to carry out the provisions of certain international conven-
20 tions, and for other purposes.”, approved July 5, 1946 (15
21 U.S.C. 1051 et seq.).

22 **SEC. 4. CORRECTION OF ERRONEOUS NAMING OF OFFICER.**

23 (a) CORRECTION.—Section 13203(a) of Public Law
24 107–273 (116 Stat. 1902) is amended—

25 (1) in the subsection heading, by striking
26 “COMMISSIONER” and inserting “DIRECTOR”; and

1 (2) in paragraphs (1) and (2), by striking
2 “Commissioner” each place it appears and inserting
3 “Director”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall be effective as of the date of the enact-
6 ment of Public Law 107–273.

7 **SEC. 5. EFFECTIVE DATE, APPLICABILITY, AND TRANSI-**
8 **TIONAL PROVISION.**

9 (a) EFFECTIVE DATE.—Except as provided in sec-
10 tion 4 and this section, this Act and the amendments
11 made by this Act shall take effect on October 1, 2003,
12 or the date of the enactment of this Act, whichever is later.

13 (b) APPLICABILITY.—

14 (1)(A) Except as provided in subparagraphs
15 (B) and (C), the amendments made by section 2
16 shall apply to all patents, whenever granted, and to
17 all patent applications pending on or filed after the
18 effective date set forth in subsection (a) of this sec-
19 tion.

20 (B)(i) Except as provided in clause (ii), sections
21 41(a)(1), 41(a)(3), and 41(d)(1) of title 35, United
22 States Code, as amended by this Act, shall apply
23 only to—

24 (I) applications for patents filed under sec-
25 tion 111(a) of title 35, United States Code, on

1 or after the effective date set forth in sub-
2 section (a) of this section, and

3 (II) international applications entering the
4 national stage after compliance with section
5 371 of title 35, United States Code, on or after
6 the effective date set forth in subsection (a) of
7 this section.

8 (ii) Section 41(a)(1)(D) of title 35, United
9 States Code as amended by this Act, shall apply only
10 to applications for patent filed under section 111(b)
11 of title 35, United States Code, before, on, or after
12 the effective date set forth in subsection (a) of this
13 section in which the filing fee specified in section 41
14 of title 35, United States Code, was not paid before
15 the effective date set forth in subsection (a) of this
16 section.

17 (C) Section 41(a)(2) of title 35, United States
18 Code, as amended by this Act, shall apply only to
19 the extent that the number of excess claims, after
20 giving effect to any cancellation of claims, is in ex-
21 cess of the number of claims for which the excess
22 claims fee specified in section 41 of title 35, United
23 States Code, was paid before the effective date set
24 forth in subsection (a) of this section.

1 (2) The amendments made by section 3 shall apply
2 to all applications for the registration of a trademark filed
3 or amended on or after the effective date set forth in sub-
4 section (a) of this section.

5 (c) TRANSITIONAL PROVISIONS.—

6 (1) SEARCH FEES.—During the period begin-
7 ning on the effective date set forth in subsection (a)
8 of this section and ending on the date on which the
9 Director establishes search fees under the authority
10 provided in section 41(d)(1) of title 35, United
11 States Code, the Director shall charge—

12 (A) for the search of each application for
13 an original patent, except for design, plant, pro-
14 visional, or international application, \$500;

15 (B) for the search of each application for
16 an original design patent, \$100;

17 (C) for the search of each application for
18 an original plant patent, \$300;

19 (D) for the search of the national stage of
20 each international application, \$500; and

21 (E) for the search of each application for
22 the reissue of a patent, \$500.

23 (2) TIMING OF FEES.—The provisions of sec-
24 tion 111(a)(3) of title 35, United States Code, relat-
25 ing to the payment of the fee for filing the applica-

1 tion shall apply to the payment of the fee specified
2 in paragraph (1) with respect to an application filed
3 under section 111(a) of title 35, United States Code.
4 The provisions of section 371(d) of title 35, United
5 States Code, relating to the payment of the national
6 fee shall apply to the payment of the fee specified
7 in paragraph (1) with respect to an international ap-
8 plication.

9 (3) REFUNDS.—The Director may by regula-
10 tion provide for a refund of any part of the fee spec-
11 ified in paragraph (1) for any applicant who files a
12 written declaration of express abandonment as pre-
13 scribed by the Director before an examination has
14 been made of the application under section 131 of
15 title 35, United States Code, and for any applicant
16 who provides a search report that meets the condi-
17 tions prescribed by the Director.

18 **SEC. 6. DEFINITION.**

19 In this Act, the term “Director” means the Under
20 Secretary of Commerce for Intellectual Property and Di-
21 rector of the United States Patent and Trademark Office.

1 **SEC. 7. CLERICAL AMENDMENT.**

2 Subsection (c) of section 311 of title 35, Untied
3 States Code, is amended by aligning the text with the text
4 of subsection (a) of such section.

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